

立法會
Legislative Council

LC Paper No. CB(1)367/2022

Ref: CB1/SS/2/22

Paper for the House Committee meeting on 17 June 2022

**Report of the Subcommittee on Three Pieces of Subsidiary Legislation
Relating to the Implementation of the New Regulatory Regime for the
Accountancy Profession Gazetted on 6 May 2022**

Purpose

This paper reports on the deliberations of the Subcommittee on Three Pieces of Subsidiary Legislation Relating to the Implementation of the New Regulatory Regime for the Accountancy Profession Gazetted on 6 May 2022 (“the Subcommittee”).

Background

2. The Financial Reporting Council (Amendment) Ordinance 2021 (“Amendment Ordinance 2021”) was enacted in October 2021 to further reform the Financial Reporting Council (“FRC”) to develop it into a full-fledged independent regulator of the accounting profession. The Amendment Ordinance 2021 amended the Financial Reporting Council Ordinance (Cap. 588) (“FRCO”)¹, the Professional Accountants Ordinance (Cap. 50) (“PAO”) and the Professional Accountants By-laws (Cap. 50A) to implement a new regulatory regime for the accounting profession by:

¹ FRCO is renamed as the Accounting and Financial Reporting Council Ordinance (“AFRCO”) pursuant to the Amendment Ordinance 2021.

- (a) empowering FRC to issue practising certificates to certified public accountants (“CPAs”) and register CPA firms, corporate practices and auditors of public interest entities (“PIE”);²
- (b) expanding FRC’s current powers of inspection, investigation and discipline over PIE auditors to cover practice units³ and CPAs, and renaming FRC as the Accounting and Financial Reporting Council (“AFRC”) in light of the expanded scope of regulation; and
- (c) expanding FRC’s oversight powers to cover the Hong Kong Institute of Certified Public Accountants (“HKICPA”)’s functions of (i) ascertaining qualification for registration as CPAs by conducting examinations; (ii) registering CPAs; (iii) arranging for mutual or reciprocal recognition of accountants; (iv) setting continuing professional development (“CPD”) requirements, and issuing or specifying standards on professional ethics, and accounting, auditing and assurance, for CPAs; and (v) providing training for qualifying as CPAs and for CPD of CPAs.

Three pieces of subsidiary legislation relating to the implementation of the new regulatory regime for the accountancy profession

3. In order to implement the new regulatory regime, the Secretary for the Financial Services and the Treasury (“SFST”) has made three pieces of subsidiary legislation, namely the Financial Reporting Council (Amendment) Ordinance 2021 (Commencement) Notice (“Commencement Notice”), the Accounting and Financial Reporting Council (Transitional and Saving Provisions and Consequential Amendments) Regulation (“Regulation”), and the Accounting and Financial Reporting Council Ordinance (Amendment of Schedule 3B) Notice 2022 (“Notice of Amendment of Schedule 3B”).

² FRC will be responsible for issuing practising certificates to qualified CPAs while the Hong Kong Institute of Certified Public Accountants will continue to be responsible for registration of CPAs subject to FRC’s oversight. A PIE refers to a corporation with issued shares or stocks listed in Hong Kong or a collective investment scheme with interests listed in Hong Kong.

³ A practice unit is defined in section 2(1) of AFRCO as (i) a certified public accountant (practising) (“CPA (practising)”) who practises accountancy on the accountant’s own account under the accountant’s own name; (ii) a CPA (practising) who practises accountancy on the accountant’s own account under a firm name; (iii) a firm of CPAs (practising); or (iv) a corporate practice.

4. The Commencement Notice is made under section 1(2) of the Amendment Ordinance 2021 to appoint 1 October 2022 as the date on which the Amendment Ordinance comes into operation, except that the provisions relating to the establishment of the Advisory Committee and the power of SFST to make regulations for transitional and saving arrangements consequential on the enactment of the Amendment Ordinance 2021 will come into operation on 4 July 2022.

5. The Regulation is made under section 94 of FRCO to provide for transitional arrangements for the handling of pending or ongoing cases upon commencement of the new regulatory regime, and consequential amendments to other ordinances and subsidiary legislation. The Regulation will come into operation on 1 October 2022, except that Part 1 and sections 92 and 98 (relating to interpretation and HKICPA's provision of records and assistance to FRC/AFRC) will come into operation on 4 July 2022.⁴

6. The Notice of Amendment of Schedule 3B is made under section 61(1) of FRCO to amend Schedule 3B to FRCO to set the fees payable for the following items by aligning them with those currently adopted by HKICPA: (a) the issue of a practising certificate; (b) the issue of a renewed practising certificate; (c) the application for registration of a firm name or firm; (d) the application for renewal of registration of a firm name or firm; (e) the application for registration as a corporate practice; and (f) the application for renewal of registration as a corporate practice. The Notice of Amendment of Schedule 3B will come into operation on 1 October 2023.⁵

The Subcommittee

7. At its meeting on 13 May 2022, the House Committee agreed to form a subcommittee to examine the three pieces of subsidiary legislation relating to the implementation of the new regulatory regime for the accountancy profession gazetted on 6 May 2022. Under the chairmanship of Hon Edmund WONG

⁴ Also, section 99(2) and (3), Division 36 of Part 11 and the Schedule (relating to further consequential amendments made to AFRCO) will come into operation immediately after section 3 of the Amendment Ordinance 2021 (i.e. the long title) comes into operation on 1 October 2022.

⁵ The fees currently specified in Schedule 3B to FRCO as amended by the Amendment Ordinance 2021 for items (a) to (f) are \$0. With effect from 1 October 2023, the fees for items (a) and (c) will be increased from \$0 to \$3,500; items (b), (d) and (f) will be increased from \$0 to \$5,050 per practising certificate, per partner of firm, or per director of corporate practice (as the case may be); and item (e) will be increased from \$0 to \$5,250.

Chun-sek, the Subcommittee has held two meetings with the Administration. The membership list of the Subcommittee is in the **Appendix**. The Subcommittee has invited written submissions from the public and received one submission.⁶

8. To allow more time for the Subcommittee to study the three pieces of subsidiary legislation, the Chairman moved a motion at the Legislative Council (“LegCo”) meeting of 1 June 2022 to extend the scrutiny period of the subsidiary legislation to the LegCo meeting of 29 June 2022. The motion was passed.

Deliberations of the Subcommittee

Establishment of the Advisory Committee

9. Members of the Subcommittee have enquired about the functions and composition of the Advisory Committee to AFRC (“Advisory Committee”) including whether there are requirements on the proportion of members who are current practitioners in the accounting profession and members’ background and professional knowledge of the accounting sector. Given that FRCO provides that all members of AFRC must be non-practitioners, Subcommittee members have stressed the importance that members of the Advisory Committee should have professional knowledge of the accounting profession to ensure that AFRC’s regulatory work would strike a proper balance between regulation and development of the profession.

10. The Administration has explained that section 7 of FRCO provides that all FRC members must be non-practitioners in order to ensure that FRC is independent of the accounting profession.⁷ By virtue of the Amendment Ordinance 2021, AFRC will become a full-fledged independent regulator for the accounting profession, and the purpose of the Advisory Committee (to be established under the new section 10B of the Accounting and Financial Reporting Council Ordinance (“AFRCO”)) is to advise AFRC on matters of policy regarding any of its regulatory objectives and functions so as to facilitate AFRC’s work under the new regulatory regime in relation to a variety of areas in accounting, audit and assurance. The Administration has made reference to the arrangements of similar setups under other financial regulators in establishing the

⁶ The written submission is from the Guangdong-Hong Kong-Macao Greater Bay Area Socialist Research Institute.

⁷ A “non-practitioner” as defined in FRCO means an individual who is not, and has not at any time within the previous three years been a certified public accountant (practicing) or a partner, director, agent or employee of a practice unit.

Advisory Committee. To enable the Advisory Committee to advise on the preparatory work for the new regulatory regime at an early stage, the Commencement Notice specifies that the provisions concerning the establishment of the Advisory Committee in the Amendment Ordinance 2021 will come into operation on 4 July 2022.

11. As regards the composition of the Advisory Committee, the Administration has advised that the new Part 4A of Schedule 2 to AFRCO stipulates that the Committee is to consist of the chairperson, the chief executive officer and not more than two executive directors of AFRC, as well as at least eight but no more than 12 other persons as appointed by the Financial Secretary (“FS”) after consulting AFRC. Such members will include practitioners, relevant service users and other stakeholders of the accounting profession. When being consulted by FS on the appointment of members to the Advisory Committee, AFRC will consider factors including but not limited to the background and experience of such persons to ensure diversity of expertise of the Committee relevant to AFRC’s prevailing regulatory work focus. With a view to providing flexibility for the appointment of members from different background to cater for the regulatory focus and operational needs of AFRC which will evolve with time, there is no specification in the legislation on the proportion of practitioners and lay persons in the Advisory Committee nor any requirements on the background or professional knowledge of the members.

12. Some members have enquired about the operation of the Advisory Committee, in particular whether it will be involved in initiating investigations and taking disciplinary actions against CPAs and practice units. The Administration has responded that the new Part 4A of Schedule 2 to AFRCO specifies the arrangements for holding meetings of the Advisory Committee while the new section 10B(3) stipulates that the Advisory Committee must meet at least once every three months. It is envisaged that the Advisory Committee will conduct frequent meetings at its inception in order to provide advice to AFRC on the latter’s preparatory work for the new regulatory regime. The Administration has reiterated that AFRC will be the independent regulator of the accounting profession and investigation and disciplinary functions are among the core functions it will perform under the new regulatory regime. The Advisory Committee will advise AFRC on the policies and strategies for achieving the related regulatory objectives and functions but will not be involved in the decision-making process of individual investigation or disciplinary cases.

Work of the Accounting and Financial Reporting Council

Development of the accounting profession

13. The Subcommittee considers that besides taking over the regulation of CPAs and practice units, AFRC has a clear role in promoting the further development of the accounting profession, such as formulating measures to enhance the development opportunities for the profession in the Mainland and overseas in collaboration with the Government.

14. The Administration has assured the Subcommittee that it will explore with AFRC ways to step up the latter's work in areas such as nurturing more professionals, strengthening CPD, enhancing access to information on professional business opportunities, and reinforcing professional standards and competitiveness, so as to support the future development of the accounting profession. On the development opportunities in the Mainland, the Administration has been discussing with the relevant Mainland authorities through various channels potential measures to facilitate the Hong Kong accounting professionals to pursue development opportunities in the Mainland. Furthermore, after the transfer of regulatory functions to AFRC, HKICPA will become an effective conduit between AFRC and the accounting profession, and can focus its resources in enhancing the development opportunities for the profession.

Combating against misleading descriptions

15. The existing PAO prohibits an individual or a company from using certain descriptions in an attempt to mislead the public into believing that the individual or company is a CPA or a practice unit registered under PAO ("the prohibition provision"). Due to the transfer of powers for issuance of practising certificates and register practice units from HKICPA to AFRC, relevant prohibitions will be transferred to AFRCO pursuant to the Amendment Ordinance 2021 correspondingly. The Subcommittee has urged AFRC to work together with the Administration to step up work in prohibiting misleading descriptions in order to enhance protection for the interests of service users and assist the accounting profession in combating the situation of bogus accountants.

16. The Administration has responded that while it recognizes the profession's concern over the use of certain misleading descriptions, different stakeholders have expressed concerns about the prohibition provision, in particular about the need to strike a balance between prohibiting the use of misleading descriptions and allowing room for development for general businesses such as book-keeping and tax services. The Administration has stressed that it had been exploring with the accounting regulatory and professional bodies on possible ways to enhance

public protection against misleading descriptions. As the matters involved are complicated and controversial, it is important for the Administration to fully consider the views of various stakeholders including the accounting profession, relevant service providers and service users in examining ways to improve the situation. The Administration will continue to discuss the subject with relevant stakeholders.

Registration work

17. The Subcommittee has enquired how AFRC would carry out its new functions in respect of registration of CPA firms and corporate practices, issuing practising certificates to CPAs, initiating investigations and taking disciplinary actions against professional persons, and in particular how AFRC can access disciplinary records of CPAs in considering applications for issuing and renewal of practising certificates.

18. Regarding registration of CPA firms and corporate practices, and issuing practising certificates to CPAs, the Administration has responded that the Amendment Ordinance 2021 stipulates the criteria and requirements for consideration by AFRC when processing applications on these matters which are largely the same as those currently provided in PAO. For instance, the Amendment Ordinance 2021 has expressly provided that AFRC has to ensure the fitness and properness of CPAs before issuing or renewing practising certificates. Moreover, section 98 of the Regulation, which is to commence on 4 July 2022, provides the legal basis for AFRC to request records and assistance from HKICPA for the preparatory work for the commencement of the new regulatory regime, and the handling of applications, cases or other matters referred from HKICPA under the transitional arrangements. This will help AFRC in setting up its register and building case database for CPAs, CPA firms and corporate practices prior to the commencement of the new regulatory regime, as well as assist AFRC's work during the transitional period. Furthermore, the new section 10A of AFRCO provides that AFRC may give directions requiring, inter alia, the production or provision of document or information. Under this new section, AFRC may, in connection with the performance of a function, give directions to a professional person who is or was a CPA or is or was a practising CPA to produce or provide a document or information in connection with the CPA registration or practising certificate. The new section 10A(5) of AFRCO provides that non-compliance of such a direction may constitute a professional irregularity referred under sections 3B and 4 of AFRCO, in relation to which AFRC may take disciplinary actions.

Investigation and disciplinary actions

19. On the conduct of investigation and disciplinary actions against practice units and CPAs, the Administration has advised that the Amendment Ordinance 2021 stipulates the scope of these functions (including investigable and sanctionable misconducts as well as powers of investigators) and the types and levels of penalties, which are similar to those currently provided under PAO.⁸ As regards the procedures for exercising the new powers, AFRC will adopt the procedures established under AFRCO and carried out by the AFRC executive team under the supervision of AFRC Board (which is made up entirely of non-practitioners), so as to ensure impartiality and independence from the profession. In order to enhance transparency of its work and the understanding of the accounting profession on its exercise of powers under the new regulatory regime, AFRC has formulated new guidelines and published documents for engagement of and consultation with the stakeholders on its investigation and disciplinary processes, as well as the sanction policy. In respect of the manpower to cater for AFRC's new powers, AFRC will recruit new staff in phases taking into account the regulatory experience of HKICPA in discharging the comparable duties in issuing practising certificates and registration of practice units, as well as registration of PIE auditors.

Transitional arrangements

20. Some members of the Subcommittee have enquired about the transitional arrangements for handling outstanding investigation and disciplinary cases after the commencement of the new regulatory regime. The Administration has advised that the Regulation stipulates that investigation and disciplinary cases which are still ongoing by the commencement of the new regime will continue to be handled under the HKICPA's mechanism to avoid interruption of the relevant proceedings. Upon the conclusion of the investigation cases, HKICPA will refer them to AFRC for consideration of the need to take follow-up actions (e.g. imposing sanctions) under AFRCO. Moreover, HKICPA and FRC have agreed that before commencement of the new regulatory regime, HKICPA will not start the investigation process of complicated cases which are expected to take a long time to complete so that AFRC will take over such cases after the commencement of the new regime under the AFRC's mechanism.

⁸ The penalties include the revocation or suspension of a registration, the cancellation of a practising certificate, the issue of a reprimand, or the issue of an order to pay a pecuniary penalty not exceeding \$500,000.

Fees to be collected by the Accounting and Financial Reporting Council

21. Some members of the Subcommittee have relayed the concerns of the accounting profession about a possible surge in AFRC's fees for issuing practising certificates for CPAs and registration of firms and corporate practices, and a proposal from the profession to extend the fee exemption period committed by the Administration to beyond one year after commencement of the new regulatory regime. These members have pointed out that HKICPA currently incurs little expenditure for the above functions, and the seed capital of \$400 million provided by the Government to FRC in 2019 can cover AFRC's expenditure in discharging the new regulatory functions. Hence there should be room for AFRC to extend its fee exemption period.

22. The Administration has responded that, upon the transfer of powers of issuing practising certificates and registering practice units to AFRC, AFRC will collect the relevant application fees previously payable to HKICPA. The Government has committed to exempting the fees relating to AFRC's new functions in the first year of the new regulatory regime. Thereafter, AFRC will start collecting the fees, which will be initially set at levels no higher than those currently adopted by HKICPA (i.e. the fee levels specified in the Notice of Amendment of Schedule 3B). The Administration has noted the views of the accounting profession about extending the fee exemption period with a view to alleviating the pressure on the profession during the transition to the new regulatory regime. However, as AFRC will take over major regulatory functions of the accounting profession including inspection, investigation and discipline under the new regulatory regime, it is necessary for AFRC to have a stable and sustainable source of income to support the related work.

23. The Administration has reiterated that in order to ease the burden of the profession, apart from waiving the fees in the first year of implementation of the new regulatory regime, it has aligned the fee to be collected by AFRC starting from October 2023 with the fee levels currently adopted by HKICPA, so as to ensure that the new regime will not bring additional financial burden to the profession. The Administration has assured the Subcommittee that it will review the fee levels after the new regulatory regime has been in operation for a period of time, and will consult LegCo on the need to adjust the fees where necessary. As the fees are prescribed in subsidiary legislation subject to LegCo's negative vetting procedure, any increase in the fees will require LegCo's approval.⁹

⁹ Pursuant to section 61(1) of FRCO, SFST may, by notice published in the Gazette, amend Schedule 3B to FRCO. Hence, any proposal to adjust the fees in Schedule 3B to FRCO has to be made by notice published in the Gazette and is subsidiary legislation subject to LegCo's negative vetting procedure.

Recommendation

24. The Subcommittee will not propose any amendment to the three pieces of subsidiary legislation.

Advice sought

25. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1 and Public Complaints Office
Legislative Council Secretariat
16 June 2022

**Subcommittee on
Three Pieces of Subsidiary Legislation Relating to the
Implementation of the New Regulatory Regime for the
Accountancy Profession Gazetted on 6 May 2022**

Membership list

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Members Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan, JP
Hon Doreen KONG Yuk-foon
Prof Hon Nelson LAM Chi-yuen, JP
Hon LAM San-keung, JP
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